89-1250

No.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1989

IN THE MATTER OF THE EXTRADITION OF
ANTONIO MANZI

ANTONIO MANZI, Petitioner

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Antonio Manzi
(Pro Se)
c/o John F. Moriarty
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31pp

QUESTIONS PRESENTED

I. Whether or not due process requires this Court to re-examine and modify the "Rule of Non-Inquiry" in extradition cases, and, in the case here presented whether discovery and an evidentiary hearing with respect to the danger to the Petitioner-Manzi's life posed by extradition to Italy should have been permitted.

II. Whether or not the Petitioner-Manzi was denied due process of law by the United State's Magistrate's failure to order the United States to produce properly translated copies of the Italian statutes providing credit for time served for persons incarcerated abroad in connection with extradition proceedings.

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The opinion of the United States Court of Appeals for the First Circuit, (App. 1-18), is reported at 888 F.2d 204 (1st Cir. 1989). The opinion of the United States District Court for the District of Massachusetts, (App. 19-23), is unreported.

JURISDICTION

The judgment of the United States Court of Appeals, (App. 42), was entered on November 1, 1989. Jurisdiction is invoked under 28 U.S.C., Section 1254(1).

CONSTITUIONAL, TREATY, AND STATUTORY PROVISIONS INVOLVED

1. The Fifth Amendment to the Constituion of the United States provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or

> public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

2. Article II, Section 1, of the Treaty between the United States and the Republic of Italy, Oct. 13, 1983, T.I.A.S. No. 10837, provides in relevant part (second sentence):

> When the request for extradition relates to a person who has been sentenced, extradition shall be granted only if the duration of the penalty still to be served amounts to at least six months.

3. Article X, Section 2(e), of the Treaty between the United States and the Republic of Italy provides:

> 2. All requests for extradition shall be accompanied by:
>
> ***
>
> (e) the texts of the laws describing the time limit on the prosecution

or the execution of the punishment for the offense.

4. The following is an attempt at a translation of an Italian statute or other legal pronouncement forwarded to Petitioner by Italian legal cousel, Annibale Schettino:

DETENTION ABROAD

"For the reason of the release from prison for expiration of the time to preventive custody, the incarceration suffered abroad commute in the duration of preventive custody, as it deduces from the precept of the Art. 138 C.P. (Deduction of the punishment from the preventive incarceration suffered abroad) Court of Appeal- United Section- Sentence issued on 28/1/950)

STATEMENT OF THE CASE

This petition seeks review of the First Circuit's decision affirming the denial by the United States District Court for the District of Massachusetts of a petition for writ of habeas corpus brought by the Petitioner, Antonio Manzi, to challenge an order for his extradition to the Country of Italy.

A complaint for extradition was filed in the United States District Court (Docket No. MBD-80-08-F) on February 11, 1985 seeking Manzi's extradition pursuant to the Extradition Treaty between the United States and Italy dated October 13, 1983 (hereinafter the "Treaty"). The Government's original submissions sought extradition of Manzi on a warrant to serve the remainder of a sentence imposed upon his conviction in Italy for rob-

bery, and on a warrant for untried charges of extortion, criminal association, the murders of Giussepe Fabi and Pietro Tangredi, and the attempted murder of Biagio Cava.

A provisional warrant for the Petitioner's arrest was issued by United States District Court Judge Frank H. Freedman, and a detainer filed, on February 11, 1985. The case was referred to U.S. Magistrate Michael A. Ponsor.

On or about June 25, 1987, the Petitioner filed a Motion for an Order Permitting the Taking of the Deposition of Eric Grose, an agent of the U.S. Immigration and Naturalization Service. In the "Motion to Depose" Manzi sought to depose Agent Grose on his participation in the apprehension of Biagio Cava who Manzi believed was in the United States to bring about Manzi's death. He said attempts had

previously been made on Manzi's life and the lives of his family by confederates of Cava. The Petitioner asserted that the Italian authorities were incapable of protecting him from attempts on his life and that extradition would pose a grave danger to his life.

The Motion to Depose also requested an evidentiary hearing with respect to the issue whether Manzi's extradition to Italy posed a danger to his life. United States Magistrate Michael A. Ponsor denied the Motion to Depose on July 14, 1987. The Magistrate conducted a hearing on or about September 8, 1987. On or about September 30, 1987, the Government filed a supplemental Memorandum enclosing, among other filings, a new Diplomatic Note from the Embassy of Italy revoking its request for extradition on the ground of ex-

tortion and reporting the Petitioner's conviction in absentia on August 2, 1986, (a 28 year sentence) with respect to the charge of criminal association, the two murder charges, and the attempted murder charge.

Thereafter, the Government was allowed further time to submit additional materials relative to the extradition proceedings. On December 23, 1987, the Government submitted a Second Supplemental Extradition Hearing Memorandum together with additional documentation from Italy. The new materials included the transcript of the proceedings underlying the Petitioner's convictions in absentia on the murder/criminal association charges. Another Diplomatic Note dated December 3, 1987, was submitted with these documents, seeking the Petitioner's extra-

dition with respect to an Italian conviction for receiving stolen property. After several extensions, the Petitioner, Manzi, filed his Memorandum in Opposition to Request for Extradition in mid-February, 1988. The Petitioner attached an Italian version of a statute received from an attorney in Italy, and a literal translation thereof, which the Petitioner-Manzi contended might operate to give him credit for time served on the Italian convictions for robbery and receiving stolen property during the pendency of the extradition proceedings.

Thereafter, on or about February 17, 1988, the Petitioner filed a Motion to Order Government to Clarify Status of the Foreign Conviction and Have

Translated the Decision on the Appeal thereof.[1] In that motion, with reference to the receiving stolen property and robbery convictions, Manzi also moved for an order that the Government provide translations of applicable Italian statutes concerning credit for time served by persons incarcerated pending disposition of requests for extradition. This "Motion to Clarify" was denied by the Magistrate. The Magistrate issued a Memorandum and Order Regarding Extradition Certification and Order of Commitment on May 18, 1988. (App. 24-36). In his memorandum the Magistrate, emphasizing the limited nature of his inquiry, gave reasons for his denial of the Petitioner's Motion to

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1. This pertained to the murder charges. All warrants for Manzi's extradition have since been recalled except those for the robbery and receiving stolen property charges.

Clarify. With respect to the Petitioner's request that the United States be ordered to produce the Italian statutes referencing credit for time served, the Magistrate found the Petitioner's contentions to be "utterly speculative." He also stated that the matter could be taken up before the Italian authorities. (App. 32).

The Magistrate's Extradition Certification and Order of Commitment were issued May 18, 1988, with his memorandum. (App. 37-41). On or about May 23, 1988, the Petitioner filed a Motion to Stay the Order pending appeal, which was allowed. On or about July 18, 1988, the Petition for Writ of Habeas Corpus and Certiorari which is the subject of this proceeding. Among other contentions, the Petitioner claimed the Magistrate's denial of his Motion to Clarify, the failure to order

production of the Italian statute affording credit for time served to persons detained abroad pending extradition, and his denial of Petitioner's motion to depose the agent of the United States Immigration and Naturalization Service and request for evidentiary hearing, all constituted a denial of his constitutional right to due process of law.

On August 31, 1988, Freedman, J. of the United States District Court denied the Petitioner's Petition. Noting the limited nature of habeas corpus proceedings, the judge essentially adopted all factual findings and legal determinations of the Magistrate. An appeal to the First Circuit Court of Appeals followed on October 5, 1988.

The First Circuit Court of Appeals affirmed the decision of the District

Court and Magistrate. (App. 1-18). The Court held that Manzi's request for the deposition and evidentiary hearing concerning his return to Italy "runs afoul of the well-established rule of 'non-inquiry' in these matters." (App. 9). The Court cited the federal courts' traditional refusal to consider questions relating to procedures or treatment that might await an individual on extradition -- even where there were questions raised as to the requesting country's ability to provide adequate safety and protection. It also noted the courts' choice to defer these questions to the executive branch because of its exclusive power to conduct foreign affairs. (App. 10-11). The First Circuit further agreed with the Magistrate that Manzi had failed to produce any factual evidence of a threat to

his safety. (App. 11).

On the issue of whether the Magistrate denied the Petitioner due process by failing to order translation or production of the statutes concerning time served in the United States, the First Circuit stated only that those matters "raise issues which should properly be placed before the Italian authorities." (App. 9).

REASONS FOR GRANTING THE PETITION

1. This case presents an opportunity for the United States Supreme Court to re-examine the legitimacy of the "Rule of Non-Inquiry" applied in extradition proceedings. The Petitioner, Antonio Manzi, was charged in Italy with, among other crimes, the attempted murder of one Biagio Cava. At the time the extradition proceedings were pending before the United States

Magistrate, Biagio Cava was apprehended by Eric Grose, an agent of the U.S. Immigration and Naturalization Service. The petitioner sought, by motion, to depose Grose concerning the apprehension of Cava, who he believed was in the United States to kill him. The petitioner asserted in the motion that attempts had previously been made on his life and those of his family by confederates of Cava. He questioned the ability of the Italian authorities to protect him, and asked for an evidentiary hearing.

The First Circuit Court of Appeals found Manzi produced "no factual evidence of a threat to his safety." In this it was plainly wrong. While simple averment of fear would not raise the issue, Manzi's assertion that there had been attempts on his

life, together with Cava's apprehension in the United States, lends substantial legitimacy to that fear.

The First Circuit was correct, however, that the deposition and requested evidentiary hearing run squarely against what has come to be known as the "Rule of Non-Inquiry." See Banoff & Pyle, "To Surrender Political Offender": The Political Offense Exception to Extradition in United States Law, 16 N.Y. U.J. Int'l J. & Pol. 169, 172 (1984); L. Anderson, Protecting the Rights of the Requested Person in Extradition Proceedings: An Argument for a Humanitarian Exception, in Transnational Aspects of Criminal Procedure. 153, 163-64 (1983). Traditionally, the federal courts have refused to consider questions relating to the political motives of a requesting state in seek-

ing extradition or inquire into the procedures or treatment that might await the individual upon his remittance to the requesting state. While not bound to do so, the courts have chosen to refer these considerations to the discretion of the Secretary of State. In Re Lincoln, 228 F. 70, 74 (E.D.N.Y. 1915). The protection of human rights has been left to the executive branch largely because of its constitutional role as the sole "organ" of the conduct of U.S. foreign policy. United States v. Belmont, 301 U.S. 324, 330 (1937). While there has been an occasional anomaly in the decided cases, In Re Moylas, 187 F. Supp. 716 (N.D. Ala. 1960) (full scale evidential hearing on political climate in town where respondent was convicted in absentia); Cf. Arnbjornsdottis-Mendler v. United States, 721 F.2d

679 (1983) (no evidentiary hearing allowed in light of Iceland's outstanding human rights record), there is no dearth of cases adhering to this rule of non-inquiry. Quinn v. Robinson, 783 F.2d 776 (9th Cir. 1986); Escobedo v. United States, 623 F.2d 1098, 1105 (5th Cir.), cert. denied, 449 U.S. 1036 (1902); Sindona v. Grant, 619 F.2d 167 (2d Cir. 1980)(involving Italy); Garcia-Guillern v. United States, 450 F.2d 1189 (5th Cir. 1971), cert. denied, 405 U.S. 989 (1972); Matter of Extradition of Pazienza, 619 F. Supp. 611 (D.C.N.Y. 1985). (See also the cases cited by the First Circuit. (App. 9-10).

The time has come to re-examine the "Rule of Non-Inquiry." Despite protestations as to the "limited nature" of habeas corpus proceedings,

the circuit courts of appeals have begun development of procedural and substantive due process tests in extradition proceedings. Plaster v. United States, 720 F.2d 340 (4th Cir. 1983) (United States' attempt to extradite former U.S. solider to West Germany for 1968 murder held to violate due process where soldier had been promised immunity for his testimony (never needed) against others); Matter of Burt, 737 F.2d 1477 (7th Cir. 1984) (another U.S. soldier to West Germany; extradition denied due to delay; court said it would review not only procedural defects but also the substantive conduct of the United States in undertaking the extradition against the right to due process) See Comment: Extradition Reform: The Role of the Judiciary in Protecting the Rights

of a Requested Individual, 9 Boston College International and Comparative Law Review, Vol. IX, No. 2 (1986) (hereinafter Extradition Reform).

The Petitioner urges the United States Supreme Court to follow the development of the law in these cases and provide a framework for the evaluation of due process claims in the context of habeas corpus proceedings testing the sufficiency of the extradition process. The assurance that the executive branch will exercise its discretion to protect against humanitarian abuses provides very cold comfort. One commentator in this area indicates that from 1941 to 1962 only two extraditions are believed to have been denied by the executive branch. Note, Executive Discretion in Extradition, 62 Colum. L. Rev.

1313, 1325-28 (1962). Another recounts that in a 1980 interview, K. Eugene Malmborg, an Assistant Legal Advisor for the State Department stated that in his 14 years of experience he had no knowledge of an instance where the Executive had refused to return a fugitive who had not fallen within the "political offense" exception to extradition. Extradition Reform, supra, at p. 229, U.S. It is apparent that there is a very real tension between the demands of diplomacy and the interest in protecting those whose extradition is sought against human rights abuses. The author of Extradition Reform states:

> Indeed, the very flexibility and discreetness of executive review may be its major flaw. The lack of documentary evidence makes difficult the task of evaluating the Secretary of State's past performance in considering these types of claims. Requested individuals seeking to assert a

> defense based on humanitarian grounds have, under executive review, little information by which to assess the potential success of their claims. The secrecy that shrouds the process of executive review leaves open a very real possibility for unchallenged dismissal of a valid claim on grounds unrelated to humanitarian concerns. Id. at pp. 320-321 [Footnote References Omitted].

In short, the executive branch has not done the job, and there is no legitimate reason for the court to stay its hand -- particularly in light of the stakes involved for the requested person.

It may be objected that opening the door to evidence concerning the prison security measures in foreign countries would involve endless evidence on collateral issues. There is, of course, no need to allow that to happen if appropriate guidance as

to legal standards, scope of discovery, and allowable evidence is given to the lower courts and magistrates. The United States Supreme Court should take the opportunity to do so in this case, and provide the review in these matters which, unfortunately, the courts have assumed-- inaccurately-- would be forthcoming from the executive branch.

2. The First Circuit was clearly wrong in holding that the statutes concerning credit for time served were matters solely for the Italian courts. These materials were required by the Treaty, and if they do, in fact, give credit for time served, they provide the Petitioner with an absolute defense to extradition. The Government provided documentation suggesting that the Petitioner had 3 years, one month, and

1 day to serve on the robbery conviction and one year's imprisonment on the charge of receiving stolen property. (App. 38). The Petitioner's Motion to Clarify requested the Magistrate to order the Government to provide copies of any Italian statutes that might afford credit for time served abroad pending disposition of requests for extradition. The Petitioner submitted a reference to Article 138 of the Italian code of Criminal Procedure and a poor translation thereof with his Memorandum in Opposition. Even given the poor translation, it was clear that this statute in some fashion pertained to the issue of credit for time served abroad. (The Petitioner also provided the Magistrate with a copy of an Italian Supreme Court case which he had been advised bore upon the issue.)

The Petitioner's insistence that

the requested statute be provided was in fact entirely appropriate. This is a perfect example of evidence offered to explain, rather than contradict, the Government's submissions. Cf. Hooker v. Klein, 573 F.2d 1360, 1365 (9th Cir.), cert. denied, 439 U.S. 932 (1978); Matter of Demjanjak, 603 F. Supp. 1463, 1464-1465 (N.D. Ohio 1984). Moreover, the Treaty affirmatively enjoins the Government to supply statutes of this nature. Article X, Section 2(e) of the Treaty requires the submission of "the text of the laws describing the time limit on the prosecution or the execution of the punishment for the offense." Statutes giving credit for time served are clearly contemplated by that provision.

The importance of such a statute to the Petitioner is plain. If the time served awaiting the extradition pro-

ceedings is credited towards his Italian sentences, the robbery and receiving stolen property charges may not satisfy the "six months to be served" minimum to qualify as extraditable offenses. See Article II, Section 1 of the Treaty. The docket shows that a warrant for Manzi's arrest was issued on February 11, 1985. A detainer had also issued. Accordingly, the time spent incarcerated since 1985 might, as a result of the warrant and detainer, run concurrently against both his state narcotics convictions and the Italian convictions. The Petitioner was certainly entitled to appropriately translated statutes to examine the question, and the Magistrate's refusal to order the Government to do so constituted a denial of due process of law. The First Circuit's opinion that this was a matter solely for the Italian authorities was clearly error in light of the Treaty's

requirements. Certiorari should be granted to review this question.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests that a writ of certiorari issue to review the judgment and opinion of the Untied States Court of Appeals for the First Circuit.

Respectfully submitted,

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89-1250

NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1989

IN THE MATTER OF THE EXTRADITION OF
ANTONIO MANZI

ANTONIO MANZI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE FIRST CIRCUIT

A P P E N D I X

THE OPINIONS BELOW

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APPENDIX

THE OPINIONS BELOW

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UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 88-2128

IN THE MATTER OF THE EXTRADITION OF ANTONIO MANZI

UNITED STATES OF AMERICA,
Petitioner, Appellee,

v.

ANTONIO MANZI,
Respondent, Appellant,

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS
[Hon. Frank H. Freedman, U.S. Dist. Judge]

Before
Breyer and Selya, Circuit Judges,
and Caffrey,* Senior District Judge

John F. Moriarty, Jr., with whom Cornelius J. Moriarty, II, and Ducharme, Moriarty & Wilson were on brief for the respondent.

Mitchell D. Dembin, Assistant United States Attorney, with whom Jeremiah T. O'Sullivan, United States Attorney, was on brief for the United States

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NOVEMBER 1, 1989

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*Of the District of Massachusetts, sitting by designation.

Per Curiam. This case is an appeal from a denial of a petition for writ of habeas corpus which sought review of a magistrate's order for the extradition of the appellant, Antonio Manzi, to Italy. On February 11, 1985, the Republic of Italy filed a request for the extradition of Manzi, pursuant to the extradition treaty between the United States and Italy ("the Treaty").[1] The Italian government seeks the extradition of Manzi on convictions of armed robbery and

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1. Extradition Treaty between the United States of America and Italy, Oct. 13, 1983, U.S.-Italy, T.I.A.S. No. 10837.

receiving stolen property.[2] On May 18, 1988, U.S. Magistrate Michael A. Ponsor issued an Extradition Certificate and Order of Commitment certifying compliance with the Treaty and ordering U.S. authorities to surrender Manzi to Italian authorities. On July 18, 1988, Manzi filed a petition for writ of habeas corpus objecting to the magistrate's order. On August 31, 1988, Chief Judge Frank H.

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2. Originally, the Italian government had also sought extradition of Manzi for charges of criminal association, extortion, one count of attempted murder, and two counts of murder for which he was convicted in absentia. As clarified in the briefs and on oral argument, however, the Italian government has withdrawn the warrants relating to criminal association, extortion, attempted murder, and murder. The warrants for armed robbery and receiving stolen property remain outstanding.

Freedman adopted all the findings of the magistrate, determined there was sufficient basis for extradition, and denied the petition for writ of habeas corpus. On October 5, 1988, Manzi appealed the district court's judgment, and now we affirm.

In examining habeas corpus petitions challenging extradition proceedings, the scope of inquiry is limited. Romeo v. Roache, 820 F.2d 540, 542 (1st Cir. 1987); Greci v. Birknes, 527 F.2d 956, 958 (1st Cir. 1976). Direct judicial review of extradition proceedings is not available, and habeas corpus review "is not a means of rehearing what the magistrate already decided." Fernandez v. Phillips, 268 U.S. 311, 312 (1925). See Sabatier v. Dabrowski, 586 F.2d 866, 868 (1st Cir. 1978). This court

may only examine "whether the magistrate had jurisdiction to consider the matter, whether the offense charged is within the treaty and by a somewhat liberal construction, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." Romeo, 820 F.2d at 542-43 (quoting Fernandez v. Phillips, 268 U.S. 311, 312 (1925); Brauch v. Raiche, 618 F.2d 843, 847 (1st Cir. 1980). In light of these standards, we shall review the appellant-Manzi's arguments on appeal.

II.

The appellant-Manzi's numerous arguments on appeal can be analyzed in three general categories: (1) the magistrate denied him due process of law in the extradition proceedings; (2) the magistrate failed to comply

with warious provisions of the Treaty; and (3) the magistrate erred in finding that receiving stolen property was an extraditable offense under the Treaty. This court shall discuss each argument in turn.

A. Due Process

The appellant-Manzi has raised a number of arguments claiming the magistrate denied him due process of law in the extradition proceeding. Specifically, Manzi objects to the magistrate's refusal to order the translation of an Italian appellate court decision purportedly reversing Manzi's convictions in Italy and the translation of several Italian statutes which may provide credit for time served by Manzi in Massachusetts prison. Further, Manzi objects to the magistrate's refusal to allow the

the deposition of an INS agent who arrested an individual allegedly determined to kill the appellant in the United States. Finally, Manzi objects to the magistrate's refusal to hold an evidentiary hearing to decide the danger to Manzi's life from extradition to Italy.

In considering Manzi's claims, this court recognizes that serious due process concerns may merit review beyond the narrow scope of inquiry in extradition proceedings. See Romeo, 820, F.2d at 544 (court considered and rejected claim that due process required competency hearing in extradition proceeding); Plaster v. United States, 720 F.2d 340, 348-49 (4th Cir. 1983) (court considered whether due process implicated when government attempted to extradite

U.S. serviceman despite prior immunity agreement); Matter of Burt, 737 F.2d 1477, 1482-87 (7th Cir. 1984) (court considered and rejected claims that considerable delay in extradition violated fifth amendment due process). See also David v. Attorney Gen. of United States, 699 F.2d 411, 415 (7th Cir.), cert. denied, 464 U.S. 832 (1983); Esposito v. Adams, 700 F. Supp. 1470, 1471 (N.D. Ill. 1988). In the instant case, however, the appellant's claims do not raise fundamental issues of substantive or procedural due process warranting our review.

First, Manzi has produced no factual evidence suggesting that the requested translations are even relevant to his case. As noted by the magistrate, the untranslated

appellate decision does not name Manzi as a party, and Manzi has presented no other evidence that the case is binding on him. Furthermore, the appellate decision only concerns charges which the Italian government has subsequently withdrawn and which are no longer a basis for extradition. See supra note 2. Finally, the untranslated statutes concern issues of credit for time served in the United States, and thus only raise issues which should properly be placed before Italian authorities.

Second, Manzi's request for a deposition and an evidentiary hearing concerning his safety in returning to Italy runs afoul of the well-established rule of "non-inquiry" in these matters. See Quinn v. Robinson, 783 F.2d 776, 789-90 (9th Cir.), cert. denied, 479 U.S. 882 (1986); Eain v. Wilkes, 641

F.2d 504, 516 (7th Cir.), cert. denied, 454 U.S. 894 (1981); Escobedo v. United States, 623 F.2d 1098, 1105 (5th Cir.), cert. denied, 449 U.S. 1036 (1980); Sindona v. Grant, 619 F.2d 167, 174-75 (2d Cir. 1980); Peroff v. Hylton, 563 F.2d 1099, 1102 (4th Cir. 1977) (per curiam); Garcia-Guillern v. United States, 450 F.2d 1189, 1192-93 (5th Cir. 1971), cert. denied, 405 U.S. 989 (1972); Matter of Extradition of Pazienza, 619 F. Supp. 611, 621 (S.D.N.Y. 1985); Matter of Extradition of Singh, 123 F.R.D. 127, 129-40 (D.N.J. 1987). Traditionally, federal courts have refused to consider questions relating to the procedures or treatment that might await an individual on extradition. See Escobedo, 623 F.2d at 1105; Sindona, 619 F.2d at 174-75; Peroff,

563 F.2d at 1102. Courts have chosen to defer these questions to the executive branch because of its exclusive power to conduct foreign affairs. See Escobedo, 623 F.2d at 1105; Sindona, 619 F.2d at 174; Peroff, 563 F.2d at 1102. Furthermore, courts have applied this rule where an individual facing extradition has questioned a foreign country's ability to provide adequate safety and protection. See Sindona, 619 F.2d at 174; Peroff v. Hylton, 542 F.2d at 1247, 1249 (4th Cir. 1976), cert. denied, 429 U.S. 1063 (1977). Given this well-established rule and Manzi's failure to produce any factual evidence of a threat to his safety, the magistrate acted properly in denying Manzi's request for a deposition and an evidentiary hearing.

B. Compliance with Treaty

The appellant-Manzi has raised a number of technical objections regarding procedural compliance with the Treaty. Specifically, Manzi makes four claims: (1) the documents supporting extradition did not contain an adequate recital of procedures available to a person convicted in absentia pursuant to article X, section 5 of the Treaty; (2) an Italian magistrate did not sign the summary of facts underlying the Italian charges pursuant to article X, section 3(b) of the Treaty; (3) tnereceiving stolen property charge did not contain a description of the time of offense pursuant to article X, section 2(b) ; and (4) certain other documents were not signed by an Italian magistrate or judicial officer pursuant to article X,

section 2(b); and (4) certain other documents were not signed by an Italian magistrate or judicial officer pursuant to article X, section 7(b). In this case, none of these technical objections raises a question within our scope of inquiry.

This court's review of the proceedings below is limited to whether there is jurisdiction, whether the offense is within the Treaty, and whether evidence exists to support the magistrate's determination of probable cause. See Romeo, 820 F.2d at 847. All of these technical objections were heard by the magistrate and, after due consideration, were decided against the appellant. On habeas corpus review, the district court adopted the findings of the magistrate as to the technical objections. Accordingly, these issues are not subject to further review.

no merit.

Article II, section 1 of the Treaty states:

> An offense, however dominated, shall be an extraditable offense only if it is punishable under the laws of both Contracting Parties by deprivation of liberty for a period of more than one year or by a more severe penalty.

This section of the Treaty imposes a requirement of "double criminality" on all extraditable offenses. See Brauch, 618 F.2d at 850-51 (interpreting similar provision in extradition treaty between United States and Great Britain). Under the Treaty, an extraditable offense must be a crime under the laws of both contracting countries. This requirement is "central to extradition law" and has been embodied in other United States extradition treaties. See id.

The Supreme Court has not interpreted this "double criminality" provision to require exact congruity

C. Extraditability of Receiving Stolen Property Charge

Finally, the appellant-Manzi questions whether the charge of receiving stolen property is properly an extraditable offense under the Treaty. Manzi argues that the Treaty requires that an extraditable offense, in this case receiving stolen property, be the same under both the laws of Italy and Massachusetts. Further, comparing the Massachusetts and Italian criminal codes, Manzi claims that the Massachusetts statute for receiving stolen property requires an element of scienter which is not present in the comparable Italian statute. Thus, Manzi argues that the charge is different in both countries and non-extraditable under the Treaty. On a careful review of the applicable law in this case, Manzi's argument has

of offenses. In Collins v. Loisel, 259 U.S. 309 (1922), the Court wrote:

> The law does not require that the name by which the crime is described in the two countries be the same; nor that the scope of liability shall be coextensive, or, in other respects, the same in the two countries. It is enough if the particular act charged is criminal in both jurisdictions.

259 U.S. at 312. Further, this court has held that "double criminality" requires only "that the acts upon which the . . . charges are based are proscribed by similar provisions of federal law, [state] law or the law of the preponderance of the states." Brauch, 618 F.2d at 851. See Matter of Extradition of Russell, 789 F.2d 801, 803-04 (9th Cir. 1986) ("each element of the offense purportedly committed in a foreign

country need not be identical to the elements of the similar offense in the United States."); Demjanjuk v. Petrovsky, 776 F.2d 571, 579-80 (6th Cir. 1985), cert. denied, 475 U.S. 1016 (1986).

In this case, the acts which make up the charge against Manzi in Italy would clearly be criminal in Massachusetts. Manzi was charged and convicted of purchasing a stolen Mercedes automobile, replacing the identification numbers and license plates on the car, and selling the "clean" car for 3,600,000 lire. Furthermore, the Italian court convicted Manzi of "having acquired or in some way received a Mercedes Automobile . . . knowing of its unlawful provenance." These facts and findings would clearly satisfy the elements of receiving stolen

property under Mass. Gen. L. ch. 26, Sec. 60.[3] Given the facts of this case and the requirements of "dual criminality," the charge of receiving stolen property is clearly an extraditable offense under the Treaty.

In sum, the district court did not err in denying Manzi's petition for writ of habeas corpus challenging the magistrate's certification of extradition. The district court's judgment is hereby affirmed.

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3. Chapter 266, section 60 of the Massachusetts General Laws provides, in pertinent part:

> Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives, or aids in the concealment of property, knowing it to have been obtained from a person by a false pretense . . . shall . . . be punished for a first offense by imprisonment in jail or house of correction for not more than two and one half years, or by a fine of not more than two hundred fifty dollars . . . .

Mass. Gen. L. ch. 266, Sec. 60 (1986).

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

IN THE MATTER OF)
THE EXTRADITION) M.B.D. NO. 85-0008-F
OF ANTONIO MANZI)
Petitioner

MEMORANDUM AND ORDER

August 31, 1988

FREEDMAN, C.J.

On May 18, 1988 a United States magistrate issued an Extradition Certification and Order of Commitment regarding the government of Italy's request to extradite Antonio Manzi who is presently incarcerated in the Cedar Junction Prison in Massachusetts for drug related convictions. Before the Court is petitioner Antonio Manzi's "Petition For Writ of Habeas Corpus and Certiorari" in which he argues that the Magistrate acted contrary to law in signing the Certification. Extradition has been stayed pending

resolution of the present motion. In his petition, Manzi repeats a host of claims raised before and rejected by the Magistrate. The government has once again objected to the petition and has filed a written brief.

At the outset, the Court recognizes its limited role in the extradition process. There are three issues to be decided by this Court: "whether the magistrate had jurisdiction, whether the offense charged is within the treaty [between the United States and Italy] and, by a somewhat liberal construction, whether there was any evidence warranting the finding that there was reasonable ground to believe the accused guilty." Brauch v. Raiche, 618 F.2d 843, 847 (1st Cir. 1980) (quoting Fernandez v. Phillips, 268 U.S. 311, 312 (1925)). Since petitioner does not challenge the

Magistrate's jurisdiction, the Court proceeds to the second and third questions.

Regarding the issue of whether the offenses charged are within the treaty, petitioner attacks the Magistrate's findings as inconsistent with the United States-Italy extradition agreement. Petitioner presents the following arguments in support of this allegation: that a judicial authority failed to sign the relevant documents; that Manzi's sentence on his robbery conviction has less than six months remaining to be served and thus is outside the scope of the treaty; that the government's statements regarding the offenses charged are not sufficient; that the stolen property charge lacks an element that the Massachusetts version requires; and that some of the offenses are political and, therefore, not extraditable.

The Court has considered each of these arguments and agrees with the Magistrate that they are all without merit. The government has complied with the treaty as fully explained by the Magistrate in his order and by the government in its opposition to the present petition.

The final issue is that of probable cause. There is no doubt in this case that there is probable cause to believe that Antonio Manzi has committed the offenses charged. In fact, he was convicted in Italy of robbery and receiving stolen property and, in absentia, of two murders, attempted murder and criminal association. These convictions, along with supporting documentation provided by Italy, meet the probable cause test for extradi-

:ability.

Finally, the Court summarily rejects petitioner's claims of due process violations regarding the Magistrate's refusal to order a translation of an Italian appellate court decision and whether Manzi may be entitled to good time credit. In addition to being outside the scope of this Court's limited review, petitioner has fallen far short of his requirement to come forth with adequate evidence supporting these blanket allegations.

For these reasons, petitioner's "Petition For Writ of Habeas Corpus and Certiorari" is hereby DENIED.

It is So Ordered.

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MASSACHUSETTS

IN THE MATTER OF)
THE EXTRADITION) M.B.D. No. 85-08-F
OF ANTONIO MANZI)

MEMORANDUM AND ORDER
REGARDING EXTRADITION
CERTIFICATION AND
ORDER OF COMMITMENT

May 18, 1988

PONSOR, U.S.M.

I have this day executed the Extradition Certification and Order of Commitment for Antonio Manzi upon the formal request of the Republic of Italy, in the form proposed by the Assistant United States Attorney. After hearing, and after review of the extensive documentation submitted in this case, I have found each of the proposed findings well supported.

The purpose of this memorandum is to

indicate, briefly, my reasons for rejecting the arguments offered in opposition to denyingthe respondent's "Motion to Order Government to Clarify Status of Foreign Conviction and Have Translated the Decision on the Appeal Thereof" (hereafter "Motion to Order").

At the outset, the limited role of the magistrate in an extradition proceeding must be noted and underlined. An extradition proceeding is not a criminal prosecution, and this fact "reflects the nature of the certification of extraditability . . ."

> . . . whether an alleged fugitive can be extradited for an offense committed outside the United States depends on our diplomatic agreements with the requesting country. The hearing is merely to ascertain whether a treaty applies and whether the evidence of criminal conduct is sufficient to justify his extradition and trial by that country. Since the executive branch is charged with the conduct of our foreign relations, the role of the

> judge or magistrate is only to insure that this minimal showing has been made . . . The question of guilt or innocence is left to a determination in a different proceeding in another country.

Sabatier v. Dabrowski, 586 F. 2d 866, 869 (1st Cir. 1978) (emphasis supplied) (citations omitted).

More recently, the First Circuit has reaffirmed, in the context of habeas corpus proceeding challenging extradition, that appellate inquiry may be directed only to "(1) whether the magistrate had jurisdiction, (2) whether the offense charged is within the treaty and, by somewhat liberal extension, (3) whether there was a reasonable ground to believe the accused guilty." Romeo v. Roach, 820 F. 2d 540 (1st Cir. 1987)(Per Curiam), quoting Fernandez v. Phillips, 268 U.S. 311, 312 (1925).

Here, there is no dispute about this court's authority to conduct extradition proceedings or its jurisdiction over the fugitive. Moreover, since fingerprints of the respondent are included in the extradition documents, along with a clear photograph of the person being sought which the court had an opportunity to compare to the flesh and blood respondent at the hearing on this matter, there is no dispute on the identity of the party in question. This Antonio Manzi is the person being sought by the Italian government.

Finally, although the precise applicability of its provisions are contested, it is undisputed that a treaty governing extradition is in full force and effect between the United States of America and the Republic of

Italy.

In seeking the certification, the Government offers a number of alternate grounds for extradition, any one of which would be sufficient. The Government contends, first, that the respondent is wanted for completion of a five-year sentence for conviction of robbery, of which in excess of three years remains to be served. He is also wanted, according to the Government, to complete a one-year term of imprisonment for receiving stolen property. Even more seriously, the Government contends that the plaintiff has been convicted in absentia, during the pendency of this extradition proceeding, of criminal association, two acts of murder and attempted murder.

In approaching the question of whether there is reasonable ground to believe the accused guilty, the court

should employ the federal standard of probable cause. Greci v. Birknes, 527 F. 2d 956, 958-959 (1st Cir. 1976). Respondent's counsel's arguments to the contrary notwithstanding, the court finds that all of the Government's proffered justifications are sufficiently supported by the extensive documentation submitted by the Government to warrant issuance of the Extradition Certification.

Respondent, as noted, has filed a "Motion to Order" which seeks documentation and information by which the respondent alleges he might attack, first, the convictions in absentia for the two murders, the attempted murder and the criminal association, and, second, the conviction for receiving stolen property. As to the first item, the respondent alleges that his convictions

in absentia may have been overturned on appeal. He seeks a complete translation of a lengthy Italian appellate decision, the "complete docket" of the case, and an order requiring the Government to "provide the current status of these convictions . . . ." In support of the motion, respondent points to an appellate decision apparently relevant to co-defendants in the Italian prosecution, but not even mentioning the respondent by name. Respondent's attorney explains the absence of his client's name from the appellate decision by the fact that he was convicted in absentia. As the Government points out, however, two other co-defendants convicted in absentia are named in the appellate decision. The more likely explanation for the absence of respondent's name from the decision is its lack of any relevance to the

respondent.

More importantly, speculation about possible adverse appellate action regarding a conviction fully supported by appropriate documentation is not sufficient ground to deny certification on the facts of this case. As the Government's previous submissions demonstrate, even before respondent's conviction in absentia overwhelming evidence, much of it from accomplices and associates of the respondent, supported probable cause to believe he committed the very serious crimes charged. Thus, even without the conviction, there is ample support for extradition. In short, the proffered reason for seeking the information is doubtful at best and, in any case, irrelevant to the present proceeding.

As to the second item, respondent claims that he is entitled to credit for

As to the second item, respondent claims that he is entitled to credit for the time served here in the United States against the one-year conviction for receiving stolen property. If this time is credited, respondent argues, the length of sentence actually to be served drops below six months and is therefore ineligible as a justification for extradition. To support this argument, respondent seeks a copy of the docket of the case in question and copies of any Italian statutes that might support respondent's position. Even more than respondent's previous argument, this contention is utterly speculative. More importantly, if correct, it may be presented to the Italian authorities. It is worth noting, in fact, that as a practical matter the respondent, who is

serving a substantial sentence in the Commonwealth of Massachusetts for state narcotics offenses, would have been in jail during the entire pendency of this extradition proceeding regardless of any action by the Italian government. It seems doubtful under these circumstances that the Massachusetts prison time would be credited to the unexpired Italian sentence.

For the foregoing reasons, respondent's Motion to Order is hereby DENIED.

Respondent raises a number of otner objections to extradition, mainly of a tecnnical nature.

First, he argues that the sentence for armed robbery, which the Government contends is still pending and remains in excess of three years, was in fact reduced "to" six months. The Government contends that the proper translation of

the Italian is that the sentence was reduced "by" six months and that this reduction has been taken into consideration in calculating the better than three years remaining to be served. Regrettably, this magistrate is not fluent in Italian. Nevertheless, the Italian government has properly certified that a sentence in excess of three years awaits the respondent. A certified translation by the United States Department of State indicates that the proper translation is "by" and not "to." This is enough.

Second, respondent contends that the necessary factual summaries submitted by the Government in support of extradition are not properly signed by "magistrates" within the meaning of the applicable treaty. This allegation is destroyed by the contrary declaration of Mary Ellen

Warlow, Associate Director of the Office of International Affairs of the Criminal Division of the Department of Justice, attached to the Government's Supplemental Memorandum and by the certification of the Italian (sic) embassador.

Third, resepondent contends that the Government has made an insufficient factual showing with regard to the murder, attempted murder and criminal association charges. Exhibit 14 submitted to the court presents more than sufficient evidence in support of these charges, to the extent this is required following the conviction in absentia. Similarly, as the Government's reply memorandum indicates, at 4, a sufficient statement of the penalty imposed and the time remaining regarding these penalties has been proffered by the Government. In addition, the Government's response in its Reply Memorandum, at 5, rebuts re-

spondent's claim that scienter is not required under Italian law for conviction for receiving stolen property.

Other objections raised by the respondent are technical in nature and simply do not suffice to avoid extradition, particularly in view of the limited nature of this proceeding. The plain fact is that the Government presents an unusually strong case for extradition. Several very serious crimes are alleged, all of them probably, and some of them certainly, supported by actual convictions. There is no need for any further delay. As noted, the Extradition Certification and Order of Commitment will issue simultaneously with this memorandum.

It is So Ordered.

/s/
Michael A. Ponsor
U. S. Magistrate

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

IN THE MATTER OF)
THE EXTRADITION) M.B.D. NO. 85-08-F
OF ANTONIO MANZI)

EXTRADITION CERTIFICATION AND ORDER OF COMMITMENT

This matter came on for hearing September 8, 1987, and thereafter, pursuant to 18 U.S.C. [Sec.] 3184 following the provisional arrest of Antonio Manzi upon formal request of the Republic of Italy. Warrants of Arrest have been issued by the Court of Appeals in Naples for the surrender of Mr. Manzi to complete his sentence for robbery, to complete his sentence for receiving stolen property, and to serve a sentence upon his conviction in absentia for two murders, an attempted murder, and criminal association.

The Court, having considered the

evidence presented by the United States on behalf of Italy, and argument of counsel, finds as follows:

1. A Warrant of Arrest is pending against Mr. Manzi requiring that he complte serving a five-year sentence imposed upon his conviction for robbery. The conviction has been upheld on appeal. The balance of the sentence to be served is 3 years, 1 month and 1 day.

2. A Warrant of Arrest is pending against Mr. Manzi requiring that he serve one year imprisonment upon his conviction for receiving stolen property; that conviction also having been upheld on appeal.

3. A Warrant of Arrest is pending against Mr. Manzi requiring that he serve a twenty-eight year sentence, imposed upon his conviction in absentia on charges of criminal association, murder and attempted murder.

4. The acts upon which these charges

are based are proscribed, as felonies, by similar criminal provisions of federal law and the law of the Commonwealth of Massachusetts.

5. The charges against Mr. Manzi, and the fugitive warrants, are included in the provisions of Article II of the 1983 Extradition Treaty between the United States and the Republic of Italy, which Treaty is in full force and effect.

6. The Antonio Manzi before this Court is the same individual charged in the Warrants of Arrest and the subject of the request for extradition by the Republic of Italy.

7. The evidence before the Court establishes probable cause that Antonio Manzi committed the crimes of criminal association, murder of Giuseppe Fabi, murder of Pietro Tangredi, attempted murder of Biagio Cava, as alleged in the

Warrants of Arrest and is sufficient to warrant his extradition to Italy pursuant to the provisions of the 1983 Treaty.

IT IS HEREBY ORDERED that this matter is certified to the Secretary of State together with all evidence before this Court, in order that a warrant may issue upon the requisition of the proper authorities for the surrender of Antonio Manzi according to the 1983 Extradition Treaty between the United States and Italy.

IT IS FURTHER ORDERED:

1. That Antonio Manzi is committed to the custody of the United States Marshal, or his authorized representative, to be confined in appropriate facilities and to remain until he is surrendered to Italy pursuant to the Treaty; and,

2. That the Clerk of this Court shall forward to the Secretary of State a copy of this Certification and Order

and documents received as evidence.

/s/ _____
MICHAEL A. PONSOR
United States Magistrate

Date: 5/18/88

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 88-2128

IN THE MATTER OF THE EXTRADITION OF ANTONIO MANZI

UNITED STATES OF AMERICA,
Petitioner, Appellee,

V.

ANTONIO MANZI,
Respondent, Appellant,

JUDGMENT

Entered: November 1, 1989

This cause came on to be heard on appeal from the United States District Court for the District of Massachusetts, and was argued by counsel.

Upon consideration whereof, It is now here ordered, adjudged and decreed as follows: The judgment of the district court is affirmed.

By the Court:

Francis P. Scigliano
Clerk